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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

**LINN COUNTY, a political subdivision
of the State of Oregon,**

PLAINTIFF,

v.

**UNITED STATES FOREST SERVICE,
an agency of the UNITED STATES
DEPARTMENT OF AGRICULTURE,**

DEFENDANTS.

Case No. 6:20-cv-01889

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE FEDERAL
FREEDOM OF INFORMATION
ACT, 5 U.S.C. § 552**

Plaintiff Linn County, a political subdivision of the State of Oregon, by its undersigned attorneys, alleges as follows.

INTRODUCTION

1. Linn County brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, to enjoin the United States Forest Service (“USFS”), a component of the United States Department of Agriculture, from continuing to improperly withhold and deny access to agency records that are responsive to a FOIA request made by Linn County pertaining to the “Beachie Creek Fire” that ravaged portions of Linn County and other surrounding areas.

2. The Beachie Creek Fire, which ultimately involved 197,000 acres comprising much of the towns of Gates, Mill City, and other nearby locations, started on or about August 16, 2020, on lands controlled by the United States Forest Service (“USFS”), near a remote part of the Opal Creek Wilderness that was ignited following a lightning storm, and which also started a number of other small blazes in the area.

3. During its first few days, USFS officials attempted to extinguish the fire, which at that point was 10 to 20 acres, but could not effectively utilize traditional means because the fire was burning on the side of a steep, densely forested mountain. Between August 18th and 20th, USFS deployed a Chinook CH-47 military style “super soaker” helicopter in an effort to suppress the fire but then, inexplicably, scaled back its efforts on August 21, leaving the fire to burn. The Beachie Creek Fire thus continued to burn at a relatively small size for days but became a conflagration in early September as conditions became windy and dry, jumping to 200 acres on September 1, 2020, then growing to 500 acres after that. When a windstorm that had been predicted for at least one week prior hit Labor Day night, the Beachie Creek Fire exploded, torching ancient rainforests in the Opal Creek area and roaring down North Santiam Canyon. The fire destroyed the communities of Mill City and Gates, decimated thousands of structures and claimed at least five lives. To date, officials have not provided the public any information about where the original Beachie Creek Fire traveled, the location where it merged with another fire in the area, or which areas it burned.

JURISDICTION AND VENUE

4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

5. Plaintiff Linn County is a political subdivision of the State of Oregon located in northwestern Oregon.

6. Defendant United States Forest Service (“USFS”), a component of Defendant United States Department of Agriculture, administers the nation’s 154 national forests and 20 national grasslands, managing a total of some 193 million acres of land. Each Defendant is an “agency” within the meaning of 5 U.S.C. § 552(f).

STATUTORY AND REGULATORY BACKGROUND

7. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to those who request them unless one or more specific statutory exemptions apply.

8. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency’s determination of which of the requested records it will release, which it will withhold and why, and the requester’s right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

FACTS

9. On September 28, 2020, Linn County filed a FOIA request with the USFS’s Pacific Northwest (PNW) Regional Office seeking records in its possession or control pertaining to the Beachie Creek Fire. Specifically, Linn County requested:

1. All written plans and guidelines relating to:

- (a) prescriptive fire or controlled burns for the Opal Creek area,
 - (b) fire planning for the Opal Creek area,
 - (c) Action Plans called for in the relevant Forest Plan relating to fire occurrences,
 - (d) written policies which implement the Action Plans,
 - (e) any policies or directives relating to natural Fires, Management Ignited Fires or Wildfires;
2. Contracts and documents relating to arrangements made with outside contractors for firefighting equipment and training in the Pacific Northwest;
 3. Contracts and documents relating to aerial and ground fire detection activities for the Opal Creek area and the Beachie Creek Fire;
 4. Records of areal detection flights and primary lookouts for the Opal Creek area from August 1, 2020, through the date records responsive to this request are provided;
 5. Records related to compliance with the Forest Plan and relevant tables relating to wildfires and prescribed burns for the Beachie Creek Fire;
 6. Maps and records depicting all former “owl circles” and all locations of other endangered species habitat in the two years immediately preceding the Beachie Creek Fire;
 7. Records declaring the Beachie Creek Fire a Prescribed natural Fire, a Management Ignited Fire or a Wildfire, and all records discussing or relating to that declaration;
 8. Records showing budgets and funding secured for suppression efforts for the Beachie Creek Fire;
 9. Records illustrating the Suppression Response for the Beachie Creek Fire;
 10. Records illustrating the Control Strategy for the Beachie Creek Fire;
 11. Records comprising or discussing or describing the Escaped Fire Situation Analysis for the Beachie Creek Fire;
 12. Records relating to inputs to and outputs derived from the FLAME computer program or any other predictive computer analysis for the Beachie Creek fire for the period commencing on August 1, 2020, through the date records responsive to this request are provided; and

13. Records comprising or discussing or describing any communications concerning the Beachie Creek Fire between USFS personnel and independent contractors from August 1, 2020, through the date records responsive to this request are provided.
14. All press releases discussing or describing the Beachie Creek Fire.
15. All Social media posts discussing or describing the Beachie Creek Fire.

Linn County also requested copies of additional records, unless they are already publicly available, in which case it requested links to (or other information regarding) where the documents may be found, specifically:

16. All current Forest Service Manuals in effect immediately preceding the Beachie Creek Fire and effective throughout the Fire Event.
17. The relevant Forest Plan which pertains to the Opal Creek area.
18. The latest version of the applicable Forest Service Mobilization Guide;
19. The latest version of the applicable Interagency Guides; and
20. The latest version of the applicable Wilderness Fire Management Implementation Plan.

A copy of the FOIA request is attached as Exhibit A to this Complaint.

10. On September 29, 2020, a Regional Litigation, FOIA, and Privacy Act Support Specialist for the Pacific Northwest Region of USFS sent an email confirming receipt of Linn County's FOIA request and assigning it a case number. A copy of the confirmation is attached as Exhibit B to this Complaint.

11. The confirmation email also purported that "your request is not perfected at this time and we will be reaching out to you to discuss clarification once it has been to thoroughly [sic] review."

12. As of the filing date of this Complaint, no such "outreach" has been forthcoming from USFS, and USFS has not otherwise responded in any way to Linn County's FOIA request.

13. Linn County has not received any records in response to its FOIA request to USFS, even though the statutory deadlines specified in 5 U.S.C. § 552 have passed.

14. Linn County has exhausted any required administrative remedies with respect to its request for agency records maintained by the Defendants.

**PLAINTIFFS' CLAIM FOR RELIEF
COUNT I
(Failure to Produce Documents)**

15. Plaintiff repeats and re-alleges paragraphs 1- 14.

16. Linn County properly asked that USFS produce records within its possession and/or control that pertain to the Beachie Creek Fire.

17. Defendants USFS and the Department of Agriculture either explicitly or constructively denied Linn County's requests in full and failed to produce any responsive documents or data.

18. Linn County has a statutory right to the agency records requested of USFS and the Department of Agriculture, and there is no legal basis for Defendants to withhold the records.

19. As a result of the actions complained of herein, Linn County was denied access to records which it was entitled to receive in violation of the FOIA.

20. Linn County therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

21. Linn County is also entitled to an award of its costs and reasonable attorney fees which it has had to incur to prosecute this action.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Order Defendants USFS and the Department of Agriculture to immediately and fully process Linn County's requests and disclose all non-exempt documents immediately to Plaintiff;

- B. Issue a declaration that Linn County is entitled to immediate processing and disclosure of the requested records by the FOIA requests;
- C. Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
- D. Award Plaintiff its costs and reasonable attorneys' fees in this action; and
- E. Grant such other relief as the Court may deem just and proper.

Dated: November 2, 2020

Respectfully submitted,

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